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Supreme Court, U.S.
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

LORRAINE P. PHILLIPS,

Petitioner,

v.

VILLAGE OF OAK PARK, IL,

Respondent.

On Petition For A Writ Of Certiorari To The Appellate Court Of Illinois First Judicial District

PETITION FOR A WRIT OF CERTIORARI

LORRAINE P. PHILLIPS
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QUESTION PRESENTED

Whether petitioner's right to due process of law secured by the Fifth Amendment to the United States Constitution was violated by respondent when the latter took real estate owned by petitioner without legislative authorization.

LIST OF INTERESTED PARTIES

The undersigned petitioner, acting *pro se*, certifies that the following listed persons and corporations have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal:

1) Lorraine Phillips;

2) Village of Oak Park, Illinois.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Lorraine Phillips, acting *pro se*, respectfully requests that this Court grant a writ of certiorari to review the judgment of the Illinois Supreme Court in this case.

OPINION ENTERED BELOW

The opinion of the Appellate Court of Illinois, First Judicial District, is an unreported order dated January 23, 2003, and captioned *Village of Oak Park v. Lorraine Phillips*, Case No. 1-01-2074. It is included as Part A of the Appendix to this petition. The October 7, 2003, order of the Illinois Supreme Court, Cause No. 96027, denying petitioner's petition for leave to appeal, is unreported. It is included as Appendix D to this petition.

JURISDICTION

The Illinois Supreme Court denied petitioner's petition for leave to appeal on October 7, 2003. Petitioner timely attempted to file a petition for writ of certiorari in this Court. On January 28, 2004, the Clerk of this Court determined that petitioner's initial submission was made in good faith but in a form that did not conform to Rules 13, 33 and 34 of this Court. The jurisdiction of this Court is invoked pursuant to 28 USC §1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Article 1, Section 15 of the Illinois Constitution states as follows:

> Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

The Fifth Amendment to the United States Constitution states as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

Petitioner, since the 1970s, was the owner of a parcel of commercial real estate located at 128 North Marion Street in downtown Oak Park, Illinois, where she operated a business college. During the 1990s, respondent, in order to advance a purported plan to redevelop its downtown area, enacted various ordinances authorizing the taking of petitioner's property through the exercise of "quick-take" eminent domain powers.

Respondent, on March 6, 1998, purportedly sent a letter via certified mail to petitioner, offering to buy her property. Respondent could not produce a certified mail green card evidencing receipt of the letter. Petitioner denied receiving the letter in the mail or via facsimile transmission.

Subsequently, in early April 1998, counsel for petitioner spoke about the property with counsel for respondent. However, there is no documentation that the former ever expressly acknowledged that the former was cognizant of any offer to purchase the property.

Respondent filed a complaint for condemnation of petitioner's property on April 8, 1998, pursuant to its quick-take authority. However, the trial court declared that the quick-take ordinance was unconstitutional. Nonetheless, the court found the respondent had established a *prima facie* case that the acquisition of the property was necessary and that respondent had made a good faith attempt to agree on a price for the property.

The case then proceeded to a jury trial to determine the amount of compensation for the property. The jury heard testimony from respondent's appraiser. It also heard petitioner testify that in August 1998, she leased the property to an individual who had commenced substantial rehabilitation work. Petitioner's appraiser testified that the property was worth approximately 45% more than that opined by respondent's expert. The jury returned a verdict establishing just compensation.

On appeal to the Illinois Appellate Court, petitioner contended that respondent had failed to establish a *prima facie* case that the taking of her property was necessary because: (a) respondent's ordinance had been declared

unconstitutional in this very case; (b) respondent's redevelopment plan was outdated in that it was so old that deadlines could not be met and, hence, it was not viable;[1] (c) petitioner had a bona fide February 6, 1998, contract to sell the property for $475,000; and (d) respondent had an agreement to sell the property to a developer and, hence, was acting as a "default broker of land."

In addition, petitioner contended that in violation of Illinois law, 735 ILCS 5/7-102, respondent attempted to exercise eminent domain powers without first attempting to reach an agreement with the owner of the property as to the amount of compensation.

Finally, petitioner contended that respondent's own ordinance, 1998-0-9, also required its attorney to negotiate with her over price, but that these negotiations never occurred.[2]

---

[1] Oak Park Ordinance 1995-0-7 authorized acquisition of properties, including petitioner's, in conjunction with a redevelopment plan, which had a completion date of 1998, three years before the commencement of this case.

[2] The ordinance provides as follows:

> Special counsel to the Village, Earl L. Neal & Associates, L.L.C. is hereby authorized and directed to negotiate with the owner or owners of and the persons owning or having an interest in the real estate and personal property described in this ordinance and to enter into on behalf of the Village contracts to purchase such interests from the owners thereof or persons interested therein. If special counsel is unable to negotiate an agreed sale to the Village of property, said special counsel is hereby authorized and directed to institute condemnation proceedings to acquire all right, title and interest in said real estate and personal property.

The Illinois Appellate Court rejected all of petitioner's contentions and affirmed the trial court's judgment. The Illinois Supreme Court denied petitioner's petition for leave to appeal.

REASONS FOR GRANTING THE WRIT

The argument for review is simple and substantial. The above-related history demonstrates that plaintiff was denied her due process rights because respondent refused to follow its own legislatively enacted scheme for exercising its power to condemn property.

The legal principles are familiar. Eminent domain is the authority to take private property for a public use so long as just compensation is paid to the owner for the taking. *Landgraf v. USI Film Products*, 511 U.S. 244 (1996). Eminent domain authority is available to governmental bodies by way of the Fifth Amendment to the United States Constitution as well as Article 1, Section 15 of the Illinois Constitution. However, this power is not unlimited. In order to establish a constitutional taking, the governmental body committing the taking must show that it has the legislative authority to take the property. *Hooe v. United States*, 218 U.S. 322 (1910).

What happened to petitioner in this case deprived her of her rights secured by the foregoing opinions. The trial court declared respondent's ordinance to be unconstitutional (App. A, p. 3), yet allowed the case to proceed. Although respondent's ordinance required it to acquire the property no later than May 1, 1998, and to complete redevelopment by November 1, 1998, it did not even file a quick-take motion until May 8, 1998, and the court's order

holding that respondent had made out a *prima facie* case for acquisition of the property was not entered until April 23, 1999. All of this activity was to advance a redevelopment plan that had a termination date of 1995. All of these facts are uncontested. They establish that it was impossible for respondent to make out a case that it was necessary to acquire petitioner's property. In addition, these facts demonstrate that respondent did not abide by the timetable set out in its own ordinance. Finally, petitioner's rights were trampled because respondent ignored Illinois statutes and its own ordnance by failing to negotiate with petitioner over fair compensation for the property.

The Illinois courts simply failed to take into account this Court's opinions governing eminent domain. Petitioner never wanted to be deprived of her property. At the least, she was entitled that the proceedings be conducted pursuant to applicable constitutional, statutory and ordinance provisions. This did not happen. Therefore, legal issues of general importance are raised by this case.

CONCLUSION

For the above-stated reasons, petitioner respectfully requests that certiorari should be granted for review of the issue of whether she was denied her right to due process of law by the extralegal and unconstitutional taking of her property by the Village of Oak Park, Illinois.

Respectfully submitted,

LORRAINE PHILLIPS
Acting *Pro Se*

APPENDIX

APPENDIX A

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

FOURTH DIVISION
January 23, 2003

No. 1-01-2074

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

VILLAGE OF OAK PARK, Plaintiff-Appellee v. LORRAINE PHILLIPS, Defendant-Appellant	)	Appeal from the Circuit Court of Cook County No. 98 L 50339 Honorable Alexander P. White, Judge Presiding

ORDER

Defendant, Lorraine Phillips (Phillips), appeals from several orders of the circuit court permitting plaintiff, the Village of Oak Park (Village), to acquire Phillips' property through eminent domain. On appeal Phillips argues: (1) the Village failed to establish the taking was necessary; (2) the Village failed to establish an attempt to agree; (3) the Village failed to follow its ordinance and (4) the circuit court erred in allowing the jury to view the property. We affirm.

As part of an ongoing effort to revitalize and redevelop downtown Oak Park, the Village enacted various ordinances, including an ordinance authorizing the acquisition of Phillips' property through the Village's "quick-take" eminent domain powers. The property located on a pedestrian mall in the downtown area, consisted of a one-story building, which had been vacant since 1991.

The Village purportedly sent Phillips a letter offering to purchase the property for $256,000, on March 6, 1998. The offer was based on an appraisal that had been completed on September 17, 1996. The letter indicated the Village's offer was valid for 10 days. Although testimony indicated the letter was sent certified mail, the Village did not receive the certified mail green card evidencing Phillips receipt of the letter. And, Phillips denied receiving the letter.

The Village subsequently faxed the March 6, 1998, letter to Phillips on March 18, 1998, and Phillips' daughter, Tina Phillips, admitted receiving the fax. She also stated she put the fax in an envelope and placed it in the elevator where her mother could retrieve it; however, Phillips stated she never received the fax. Tina Phillips also admitted sending a letter to counsel for the Village on March 26, 1998, in which she used her mother's letterhead and her mother's signature stamp. The letter indicated Phillips would not sell the property for $256,000. Tina Phillips also stated her mother did not know she wrote the letter.

On April 1, 1998, Phillips' attorney, Phillip Makin, and counsel for the Village engaged in a telephone conversation about the property. Each attorney wrote a letter summarizing the conversation. The Village's letter

included a statement "I understand from our conversation today that Mrs. Phillips does not accept the offer to purchase tendered by the Village." Makin's letter stated "I also need a copy of the appraisal used as a basis for the Village's offer to buy my client's property for $256,000."

Because the Village believed its offer to purchase the property had been rejected, the Village filed a complaint for condemnation in the circuit court to acquire the property on April 8, 1998. The complaint was initially filed pursuant to the Village's quick-take authority. However, after the circuit court held the quick-take ordinance unconstitutional, the matter proceeded pursuant to the Village's general eminent domain powers.

Carl Swenson, village manager of Oak Park, testified the property was located in the downtown area the Village had designated as a redevelopment district. Although the Village's ordinances contemplated the downtown redevelopment would be completed before 1998. Phillips' property was the last vacant property in the pedestrian mall area and was "seriously deteriorating." Swenson also stated the Village did not have a contract or agreement with any individual to purchase or develop the property.

The circuit court found the Village had established a *prima facie* case that the acquisition of the property was necessary to complete the redevelopment of the downtown area. The court's order stated specifically that the taking was necessary because the property was continuously vacant, in need of rehabilitation and was having an adverse effect on the development area. The court also found the Village had established a *prima facie* case that there had been a good faith attempt to agree on compensation based on the Village's March 6, 1998, offer letter, and

the April 1, 1998, letter to Phillips' counsel from the Village's counsel. The court stated that the statement in the April 1, 1998, letter that Phillips rejected the Village's offer was never contradicted and was sufficient to establish an attempt to agree. The court also found the Village has proceeded in compliance with its ordinance that required counsel for the Village to negotiate with Phillips because the evidence indicated a settlement discussion between the parties' attorneys occurred on April 1, 1998.

The matter then proceeded to a jury trial to determine the amount of compensation for the property. At trial, Francis Lorenz, a real estate appraiser, testified as Oak Park's expert. Lorenz inspected the property on May 7, 1998, and testified the property had an extensive amount of water damage. Lorenz estimated the fair market value of the property as of April 8, 1998, at $327,000.

Theodore Kowalski, a real estate appraiser, testified as Phillips' expert. Kowalski inspected the property in late 1999 and early 2000. Kowalski stated the property appeared to be in "good condition," however, he also admitted some of the flooring, walls and ceilings were in a dilapidated condition. He also stated that Phillips gave him several pictures of the interior of the building that were purportedly taken on April 8, 1998, in which the interior did not appear dilapidated. Kowalski relied on those pictures as well as his observations of the building to estimate the fair market value of the property at $475,000, as of April 8, 1998.

Phillips testified and admitted the building had suffered water damage since April 8, 1998, because the roof needed to be repaired. She also stated that in August 1998, she leased the property to an individual who began

demolishing the interior of the building. Phillips stated that the combination of the leaky roof and the demolition work caused the building to appear to be in a substantially different condition than it was on April 8, 1998.

In rebuttal, Robert Mathis testified he inspected the building on January 27, 1998. Mathis observed the part of the ceiling and floors were completely waterlogged, there were water stains on the walls and there was a lot of mildew. He stated the condition of the building did not resemble the condition depicted by Phillips' pictures.

The jury subsequently returned a verdict establishing just compensation of $390,500.

I. The Necessity of the Taking

On appeal, Phillips first contends the Village failed to establish a *prima facie* showing that the taking of her property was "necessary." Private property shall not be taken for public use without just compensation. 735 ILCS 5/7-102 (West 2000); *Hawaii Housing Authority v. Mickiff*, 467 U.S. 229, 231, 81 L. Ed. 2d 186, 191, 104 S. Ct. 2321, 2324 (1984). The power of eminent domain is limited to takings that are necessary. *City of Waukegan v. Stanczak*, 6 Ill. 2d 594, 598 (1955). A taking will be deemed necessary if the taking is for a public use. *Department of Public Works and Bldgs. v. Lewis*, 411 Ill. 242, 245 (1952). The definition of public use depends upon the facts of each case. *Southwestern Illinois Development Authority v. National City Environmental, L.L.C.*, 199 Ill. 2d 225, 236 (2002). The taking of blighted areas is permitted for the purposes of redevelopment and property taken by eminent domain may be subsequently transferred to private persons without defeating the public use of the taking.

Southwestern Illinois Development Authority, 199 Ill. 2d at 235, 238.

Initially, Phillips argues that after the court declared the Village's quick-take ordinance unconstitutional, the Village was required to reprove its *prima facie* showing that the taking was necessary. Phillips argues the matter should not have proceeded until the Village reproved the taking was necessary. Phillips, however, does not cite to any pertinent authority to support her contention. We deem her argument waived. See Supreme Court Rule 341(a)(7) (188 Ill. 2d R. 341(a)(7)). Further, requiring the Village to reprove the same set of facts would serve no purpose.

Phillips also argues the Village failed to establish a *prima facie* showing that the taking was necessary because the Village's redevelopment plan was outdated and the Village had an agreement to sell the land to another individual.

The record supports the circuit court's finding the Village established a *prima facie* showing that the taking was necessary. Through the testimony of the village manager, Carl Swenson, the Village established the taking of the property was necessary to complete the redevelopment of the downtown area. Although the redevelopment of the property will not be completed by the estimated date, it can still be redeveloped pursuant to the redevelopment plan. Merely because the redevelopment plan will not be completed by the estimated date does not mean the plan is no longer viable. In fact, the testimony established Phillips' property was the only remaining property in the area to be redeveloped.

Phillips also argues the taking was not necessary because she had entered into contracts to sell the property. The first contract was with John G. Thedos to purchase the property for $450,000, and was purportedly signed on February 2, 1995. Phillips stated however, the contract was cancelled when Thedos suddenly became ill. The second contract was with Sandre Graff to purchase the property for $475,000, and was purportedly signed on February 6, 1998.

Prior to the jury trial, the Village filed a motion *in limine* to exclude both contracts alleging they were not *bona fide* offers to purchase the property. Documents attached to the motion indicated Phillips lived with and had an intimate relationship with Thedos for numerous years and also that Graff was Thedos' cousin. In fact, Phillips had filed a claim against Thedos' estate alleging that she took care of him on a daily basis and provided him with room and board and nursing care. Also, there was evidence that the Thedos contract had not been signed as late as May 14, 1998. Further, although Graff denied knowing Thedos, she attended his funeral in May 1998. The circuit court granted the motion in limine, finding the contracts were inadmissible. Because the circuit court determined the contracts were inadmissible on the basis they were not *bona fide* offers to purchase the property, we find Phillips' argument unpersuasive.

Phillips further argues the taking of her property was improper because the Village had an agreement with another individual to redevelop the property. Phillips maintains that the Village cannot act as a "default broker of land." However, the village manager testified the Village did not have an agreement or contract with another individual to redevelop the property. Also, property

taken by eminent domain may be acquired by a private individual for redevelopment without defeating the public use of the taking. See *Southwestern Illinois Development Authority*, 199 Ill. 2d at 235.

II. Attempt to Agree

Phillips next argues the Village failed to make a good faith attempt to agree on compensation. A condition precedent to the exercise of the power of eminent domain is an attempt to reach an agreement with the property owner on the amount of compensation. 735 ILCS 5/7-102 (West 2000). A written offer requesting acceptance within a specified period of time establishes an attempt to agree, even if no further negotiations are held. *Illinois State Toll Highway Authority v. Karn*, 9 Ill. App. 3d 784, 791 (1973).

The evidence supports the court's finding that the Village made a good faith attempt to agree on compensation. Although there was a factual dispute whether Phillips received the Village's March 6, 1998, offer letter, additional evidence indicated Phillips either received the letter or was aware of the offer but rejected the Village's offer. The Village made a second attempt to notify Phillips of the offer when it faxed her a copy of the letter on March 16, 1998. Phillips' daughter admitted receiving the fax, although Phillips again stated she never saw the letter. Additionally, a letter written on Phillips' stationary bearing her name and stamped signature was mailed to the Village's attorney on March 26, 1998. The letter stated Phillips would not sell her property for $256,000. The Village's April 1, 1998, letter to Phillips' attorney also indicated that Phillips did not accept the offer. Phillips' attorney's letter dated the same day, also indicated Phillips was aware of the Village's offer

to purchase the property for $256,000. The evidence indicated that Phillips rejected the Village's offer. This is sufficient to establish an attempt to agree. No further negotiations by the Village were necessary. See *Illinois State Toll Highway Authority v. Kern*, 9 Ill. App. 3d at 791.

Phillips also argues the offer was not a *bona fide* offer because it was based on an outdated appraisal. Although the appraisal that formed the basis of the Village's offer was about a year and-a-half old, the offer was not so unreasonable in light of the fact that the building remained vacant and further deterioration occurred during that period.

III. The Village's Compliance with its Ordinance

Phillips next contends the Village did not proceed pursuant to its ordinance. Phillips argues the Village's ordinance required counsel for the Village to negotiate with Phillips, which she argues never occurred.

Phillips' argument refers to a provision in the Village's quick-take ordinance, which provides in part "special counsel to the Village, Earl L. Neal & Associates, L.L.C., is hereby authorized and directed to negotiate with the owner or owners * * * ."

Contrary to Phillips' contention, counsel for the Village did attempt to negotiate with Phillips. Counsel for the Village and Phillips' attorney engaged in a telephone conversation about the property on April 1, 1998. The letter each attorney wrote after the conversation indicated they discussed the Village's offer to purchase the property and Phillips' rejection of that offer.

IV. Jury View

Lastly, Phillips contends the court abused its discretion in allowing the jury to view the property. Phillips argues she was prejudiced because the condition of the property was substantially different than it was at the time the complaint was filed. She relies on *Illinois State Toll Highway Authority v. Grand Mandarin Restaurant, Inc.*, 189 Ill. App. 3d 355 (1969). Phillips further adds that the prejudice she suffered was evidenced by the juror's statements to the parties after trial.

Pursuant to section 7-118 of the Code of Civil Procedure (735 ILCS 5/7-118) (West 2003)), either party may request the jury to view the subject property. That section provides in part, '[t]he jury shall, at the request of either party, go upon the land sought to be taken or damaged, in person, and examine the same * * * .' 735 ILCS 5/7-118 (West 2000).

Phillips does not dispute Oak Park's right to request the jury to view the property; rather, she argues it was improper in this case because there had been a substantial change in the condition of the property between the date of filing the petition for condemnation and when the jury view the property.

In *Grand Mandarin*, the property acquired through eminent domain contained a restaurant and banquet facility and was valued when the facilities were operational. Nearly two months later, after defendants had removed personal property and fixtures from the facilities, a videotape of the property and facilities was made. This court held on appeal the trial court did not abuse its discretion in refusing to permit the jury to view the videotape because the condition of the property was materially

different than it was on the valuation date. The court found the property had been valued based on its use as a restaurant and banquet facility and the condition of the property as it existed at the time the facilities were operational was material to the valuation. *Grand Mandarin*, 189 Ill. App. 3d at 360. The court also found that if the jury were permitted to view the condition of the property following its abandonment by defendants and the removal of equipment and fixtures, they would be mislead and it would unnecessarily prejudice their valuation of the property. *Grand Mandarin*, 189 Ill. App. 3d at 360.

Here, however, Phillips' property had been vacant for a period of about eight years when the petition for condemnation was filed. There was no conclusive evidence the condition of the building had substantially changed. Instead, the jury heard conflicting evidence as to the condition of the interior of the building at that time. They viewed Phillips' pictures which were purportedly taken days before the petition was filed and showed the building in "good condition." The jury also heard the testimony of the Village's expert that in May 1998, the property had extensive water damage. The jury also heard from rebuttal witness Robert Mathis that Phillips' pictures did not accurately reflect the condition of the building as of January 1998. The jury weighed the evidence and its determination of compensation was within the range of both experts' valuations. We cannot find that Phillips suffered any prejudice as a result of the jury view. Also, we are unable to address Phillips' argument regarding the juror's statements to the parties after trial because the statements are not contained in the record on appeal.

Accordingly, the judgment of the circuit court is affirmed.

Affirmed.

KARNEZIS, J., with THEIS, P.J., and HARTMAN, J., concurring.

APPENDIX B

FOURTH DIVISION
JULY 19, 2001

NOTICE
The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

1-00-2645

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, (Village of Oak Park), Plaintiff-Appellee, v. LORRAINE PHILIPS, Defendant-Appellant.	) Appeal from the Circuit Court of Cook County.) No. L 0995033) Honorable Nello P. Gamberdino, Judge Presiding

SUMMARY ORDER

The Village of Oak Park filed an ordinance violation complaint against defendant Lorraine Phillips on April 6, 2000, alleging that she had completed roof repairs on the building at 130 N. Marion without a permit. The circuit court found her guilty of the ordinance violation and fined her $350. Defendant filed a *pro se* notice of appeal from that judgment.

We are unable to reach the merits of defendant's request due to her failure to meet the minimum requirements of the Supreme Court Rules governing the record on appeal or the presentation of argument and citation of authority. Defendant has filed only the common law record and has failed to provide a report of proceedings or an acceptable substitute. 166 Ill. 2d R. 323. The attachments to her brief which are not otherwise of record are not properly before the reviewing court and may not be used to supplement the record. *Jones v. Police Board of the City of Chicago*, 297 Ill. App. 3d 922, 930 (1998). In the absence of any record of the evidence heard by the circuit court, it must be presumed that its finding was supported by ample grounds. *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993) (*Boalbey*).

Defendant has also failed to conform to the rules governing appellate briefs, particularly in her failure to present a cogent argument, provide reasons for her request for reversal or cite any authority in support thereof in violation of Supreme Court Rule 341(e)(7) (177 Ill. 2d R. 341(e)(7)). *Boalbey*, 242 Ill. App. 3d at 462-63; *People v. Trimble*, 181 Ill. App. 3d 355, 356-57 (1989).

Under these circumstances, the judgment of the circuit court of Cook County is affirmed. This order is entered pursuant to Supreme Court Rule 23(c)(2), (6) (166 Ill. 2d R. 23(c)(2), (6)).

Affirmed.

HARTMAN, P.J., with HOFFMAN and SOUTH JJ., concurring.

APPENDIX C

NOTICE
The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

FOURTH DIVISION
JANUARY 23, 2003

No. 1-01-2074

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

VILLAGE OF OAK PARK, Plaintiff-Appellee, v. LORRAINE PHILIPS, Defendant-Appellant.	) Appeal from the Circuit) Court of Cook County.) No. 98 L 50339) Honorable) Alexander P. White,) Judge Presiding

ORDER

Defendant, Lorraine Phillips (Phillips), appeals from several orders of the circuit court permitting plaintiff, the Village of Oak Park (Village), to acquire Phillips' property through eminent domain. On appeal Phillips argues: (1) the Village failed to establish the taking was necessary; (2) the Village failed to establish an attempt to agree; (3) the Village failed to follow its ordinance and (4) the circuit court erred in allowed the jury to view the property. We affirm.

APPENDIX D

96027

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

October 7, 2003

Mr. Nicholas C. Dranias
Dranias, Harrington & Wilson
77 West Washington St., Suite 1020
Chicago, IL 60602-2850

No. 96027 – Village of Oak Park, respondent, v. Lorraine Phillips, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for appeal as a matter of right or leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 29, 2003.

APPENDIX E

High court limits eminent domain power

By DANIEL C. VOCK
Law Bulletin staff writer

SPRINGFIELD – The Illinois Supreme Court reversed course in a takings dispute involving a racetrack in the St. Louis area on Thursday, holding that the track could not use the eminent domain powers of a state agency to secure nearby land for a parking lot.

In a rare move, the high court issued a new opinion that came to opposite conclusions from what the justices originally decided a year ago.

Justice Rita B. Garman, who previously sided with the racetrack, wrote the opinion for the majority on Thursday. The court determined that the Southwestern Illinois Development Authority could not condemn land for transfer to Gateway International Raceway.

"The essence of this case relates not to the ultimate transfer of property to a private party. Rather, the controlling issue is whether SWIDA exceeded the boundaries of constitutional principles and its authority by transferring the property to a private party for a profit when the property is not put to a public use." Garman wrote.

Gateway's actions drew widespread attention to the case. The City of Chicago and the Illinois Municipal League, among others, filed briefs in support of allowing the condemnation action. A national libertarian activist group cited the action as one of the top 10 abuses of eminent domain in the country.

The legal history of the case stretches across five Aprils.

National City Environmental LLC and St. Louis Auto Shredding Co., the owners of the land, weren't using the property when SWIDA seized it in April 1998 but said they planned to use it for a landfill. The owners had turned down an earlier attempt to purchase the property for $1 million.

The racetrack wanted to add parking to accommodate additional spectators that it anticipated as a result of its plan to begin hosting NASCAR races.

Gateway asked the agency to use its quick-take power to seize the property; in April 1998, St. Clair County Circuit Judge John M. Goodwin Jr. approved the transfer. Goodwin fixed the value of the land at $900,000 and conveyed it to SWIDA, which turned it over to Gateway.

In April 1999, a panel of the 5th District Appellate Court reversed Goodwin's decision, finding that the agency exceeded its authority and that the land was not for a "public use" under the Illinois Constitution. Article 1, section 15.

Last April, a four-member majority of the high court sided with the trial court in an opinion authored by Justice Charles E. Freeman.

Three judges – Chief Justice Moses W. Harrison, Justice Thomas L. Kilbride and Justice Robert R. Thomas – dissented from that decision, calling SWIDA's power under the majority's ruling "akin to the tyranny our forefathers fled."

On Thursday, it appeared that two members of the court – Garman and Justice Thomas R. Fitzgerald – changed their minds on the matter, which the high court agreed to reconsider in June.

Freeman dissented, echoing many of the elements of the original decision. Justice Mary Ann G. McMorrow joined in the dissent.

But the majority held that it was not enough that the public might benefit from additional parking on the National City lot, especially because Gateway could have built a parking lot on its existing property.

The majority concluded that the true beneficiaries of the taking would be private businesses and not the public.

"Clearly the foundation of this taking is rooted not in the economic and planning process with which SWIDA has been charged. Rather, this action was undertaken solely in response to Gateway's expansion goals and its failure to accomplish those goals through purchasing NCE's land at an acceptable negotiated price," Garman wrote.

"It appears SWIDA's true intentions were to act as a default broker of land for Gateway's proposed parking plan," she added.

Jerold S. Solovy, a partner at Jenner & Block representing National City, said the sweep of the decision is not that significant when applied to "traditional" government uses for eminent domain, like obtaining land for schools, roads and fire stations.

But the decision should alert governments that they should not take private property to give to another private

party only because the government thinks the land could be better used.

An attorney for the Institute for Justice, a Washington, D.C.-based libertarian group, said the high court's decision follows a national trend of courts putting the brakes on the expansion of eminent domain powers.

Scott G. Bullock, a senior attorney for the public interest law firm, said that in the last five years judges have scaled back those powers because of increasing "abuse."

Courts previously allowed greater taking powers to condemn property in blighted areas, but now they are encountering cases where governments are taking property that is not blighted, such as the property at issue in the SWIDA case, Bullock said.

The group included the Gateway expansion in a list of the top 10 abuses of eminent domain powers, because SWIDA invited companies to apply for condemnations and then collected a commission for taking the property, Bullock said.

But an attorney for the authority, Hugh C. Griffin of Lord, Bissell & Brook, said the high court applied an improper standard for reviewing the trial judge's decision.

He highlighted Freeman's argument that the court should have given more deference to the trial judge, and considered only whether he abused his discretion or made a ruling against the manifest weight of the evidence.

Beyond that, Griffin said the court's decision does not comply with two U.S. Supreme Court precedents: Hawaii Housing Authority v. Midkiff, 467 U.S. 329, 81 L.Ed.2d

186, 104 S.Ct. 2321 (1984), and Berman v. Parker, 348 U.S. 26, 99 L. Ed. 27, 75 S.Ct. 98 (1954).

In his dissent, Freeman chastised the majority for reading into those two cases a requirement that the result of the condemnation must be a public entitlement to use or enjoy the property by right.

"Not only is the majority disingenuous in its citation to Hawaii Housing Authority and Berman but it seeks to unravel the holdings of these opinions, for in imposing a requirement that the property be put into use for the general public, the majority effectively interdicts any taking for the purpose of economic development." Freeman wrote.

The case is The Southwestern Illinois Development Authority v. National City Environmental LLC, et al., No. 87809.

In other action Thursday, the high court ruled in favor of an insurance agency in a dispute over whether a life insurance policy began to run the day a man received a conditional receipt or from the date written into the formal policy.

The justices held without written dissent that the policy's coverage started on the date specified in the insurance contract. The issue arose when a man died little more than two years after applying for life insurance.

The man lied on his application, but his widow claimed that the policy had become "incontestable" because the insurance company did not challenge his policy application within the two years it had to do so. But the company countered that it had indeed refunded his premiums within two years, relying on the later date in the

formal policy. Marilyn Lauer v. American Family Life Insurance Co., No. 91804.

The court also granted a defendant a chance to withdraw his guilty plea in a Champain County case regarding whether the defendant would have pleaded differently if he had known the standards for insanity he relied on were invalid. People v. David Belcher, No. 91417.